

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 1914 (MS) OF 2001
(Old No. 7099/2000)

1. Jagdish Singh, S/o late Jai Kishan,
 2. Ramesh Singh, S/o late Jai Kishan,
 3. Suresh Baboo, S/o late Jai Kishan,
 4. Naresh Singh, S/o late Jai Kishan,
 5. Mahesh Singh, S/o late Jai Kishan,
- All residents of Village Khamariya,
Tehsil-Sitarganj, District Udham Singh Nagar.

.....Petitioners.

Versus

1. Addl. Commissioner, Kumayun Mandal, Nainital.
2. Assistant Collector/Pargana adhikari, Khatima, District-
Udham Singh Nagar.
3. Chheda Singh, S/o Raghunandan,
- 4/1. Rajkumar Singh,
- 4/2. Shiv Kumar Singh,
- 4/3. Brahm Kumar,
All S/o late Sri Jaswant Singh,
- 4/4. Smt. Chamola Devi, W/o late Sri Jaswant singh,
5. Bhagwan Singh, S/o late Sri Mulli Ram,
6. Kashmir Singh, S/o Sri Arjun Singh,
All residents of Village Khamaria, P.O. Nanakmatta,
District – Udham Singh Nagar.
- 7/1. Narayan Singh, S/o late Sri Amar Singh,
Resident of Village Sundarpur, P.O. Nanakmata, District
Udham Singh Nagar.

8. Akhtar Singh, S/o Hardutt Singh, R/o Village Khamaria, P.O. Nanakmata, District-Udham Singh Nagar.
9. Gram Sabha, Village Khamaria, through its Sabhapathi, Tehsil and Block Sitarganj, District-Udham Singh Nagar.
10. State of U.P., through Collector, District Udham Singh Nagar. Respondents.

Sri Vijay Bhatt, Advocate for the petitioners.

Mr. Diwakar Chamoli, Advocate for he respondent no. 9.

Mr. D.S. Patni, Advocate for the respondent no. 1

Mr. Narayan Datt, Advocate for the respondent no. 3 to 8.

Learned Standing Counsel.

Dated: 05.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition , the petitioner have prayed for a writ of certiorari quashing the order dated 22.11.1999 and 23.05.1999 passed by the respondents no. 1 and 2.

Briefly stated, a suit for partition under Section 176, U.P.A.A. & L.R. Act wad filed by the respondent no. 3 Chheda Singh and others against the petitioners in the Court of Pargana Adhikari, Sitarganj, District Udham Singh Nagar. The suit was disposed of and a preliminary decree has been prepared and thereafter another suit was filed by the petitioner under Section 229-B of the U.P.Z.A. & L.R. Act.

During the pendency of the suit, the petitioners have moved an application under Section 4-A of the Code of Civil Procedure and prayed that both the suits may be consolidated. The trial Court has rejected the said application for consolidation of both the suits vide its order dated 23.05.1999.

A revision was preferred before the Additional Commissioner, Kumaun Mandal, Nainital. The same was also dismissed. Hence the present writ petition has been filed.

The grounds given by the two courts below that the provision of Section 4-A of the Code of Civil Procedure is not applicable inasmuch as in the suit filed by the respondent no. 3

the preliminary decree has been passed and as such there is no occasion for consolidating both the suits after passing of the preliminary decree.

In view of the above, I do not find any illegality in the order passed by the courts below so as to interfere under Article 226/227 of the Constitution.

The writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

05.05.2006

Rathour